
U.S. Department of Labor
Office of Administrative Law Judges
Mercedes City Center
200 S. Andrews Avenue, Suite 605
Ft. Lauderdale, FL 33301

88-ERA-15

In the Matter of

ANDREW BARTLIK
Complainant,

v.

TENNESSEE VALLEY AUTHORITY,
Respondent

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Debra S. Katz, Esq.
Washington, D.C.
For the Complainant

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Tennessee Valley Authority
For the Respondent

Before: E. Earl Thomas
District Chief Judge

DECISION AND RECOMMENDED ORDER

This matter arose under certain employee protection provisions of the Energy Reorganization Act of 1974, as amended, (hereinafter referred to as the Act), 42 U.S.C. § 5851, and the Regulations implemented thereunder, 29 C.F.R. Part 24. On December 23,

1987, Complainant, Andrew J. Bartlik, a fire protection engineer formerly employed by the Tennessee Valley Authority (hereinafter "TVA"), filed a complaint with the Secretary of Labor alleging that TVA violated the Act by refusing to renew or extend his employment contract because he had raised safety problems in TVA's nuclear fire protection program.

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After investigation, the Department of Labor's Area Director of the Wage and Hour Division, Employment Standards Administration determined that Complainant had been the subject of discrimination because he raised nuclear safety issues, and ordered TVA to institute certain corrective measures to abate the discrimination. TVA subsequently requested a hearing on this determination.

A formal hearing was held in Knoxville, Tennessee after Complainant had waived the requirements of 29 C.F.R. § 24.6(b)(1) which specify that the Secretary of Labor shall issue a final agency decision within 90 days of the filing of a complaint. The following findings and conclusions are based upon my observation of the appearance and demeanor of the witnesses who testified at the hearing, and upon an analysis of the entire record, arguments of the parties, applicable regulations, statutes, and case law precedent.

STATEMENT OF FACTS

I. Employer TVA

In connection with its responsibilities for federal control and management of water resources in the Tennessee Valley region, TVA has been a major supplier of power through its construction and operation of hydro-electric dams and, more recently, nuclear power plants. These plants are licensed by the Nuclear Regulatory Commission (NRC).

TVA's nuclear program is managed by its office of Nuclear Power (ONP). The Division of Nuclear Engineering (DNE) provides most of the engineering services for ONP through central offices at its headquarters which oversee engineering offices located at each of several plants.

In 1985, TVA shut down all of its operating nuclear units because of various safety concerns and management problems, and ceased pursuing NRC approval to continue construction on new units. Since that time, TVA has engaged in a massive recovery program to resolve these problems and put its nuclear power units back in operation.

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II. The Engineering Program

At the time TVA ceased generating nuclear power in 1985, it had two operating units at the Sequoyah Plant, three at the Browns Ferry Plant, two completed but not in operation at the Watts Bar Plant, and one (or more) under construction at its Bellefonte Plant. In the mid 1980's, TVA began to increase the size of its engineering work force in order to obtain additional engineering services. Instead of hiring engineers directly as either permanent or temporary civil service employees, TVA entered into contracts with various technical services and architect-engineer firms to provide engineers in the needed disciplines. These persons worked as contract employees providing their services directly to TVA, were managed by TVA supervisors, and augmented TVA's regular staff. They were accordingly known as "staff augmentees." By early 1987, ONP had some 2,800 staff augmentees. DNE had over 2,100 such persons" most of whom were engineers, including over 50 in the mechanical engineering branch (MEB).

Staff augmentees were used essentially in the same manner as TVA's regular ngineers, and the companies that furnished them had no responsibility for their work product: TVA bore the supervisory responsibility. The companies furnishing staff augmentees were rather like temporary employment service firms, and the engineers they furnished looked to TVA management for direction and control of the work. Because of the management problems[1] and resulting poor engineering progress being made in TVA's recovery program to restart its nuclear units, a decision was made to shift supervisory responsibility from TVA's managers to the engineering firms.

ONP decided to switch from staff augmentation (personal service) contracts to "managed task" contracts which required engineering companies to provide a completed engineering design proposal for a specified problem or project. TVA engineers referred to this contract objective as a "deliverable". The managed task contracts required a defined scope of work which the contractor was to perform at an agreed-price by an agreed date.

TVA negotiated managed task contracts with various engineering firms and began phasing out the staff augmentee program in 1987. Although it seems clear that TVA sincerely intended to switch from a program of contracting with firms for individual services to a project proposal type of contract, it appears from the evidence that, in the final analysis, TVA continued to deal with many of the same engineers, regardless of the method of contracting. There was no denial by TVA that most, if not

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virtually all of the 2,100 engineers employed under the staff augmentee program would continue employment under the new contracting arrangement. It is simply inconceivable that the universe of available nuclear engineers would be great enough to permit a major turnover of personnel.

Although contractors under the "managed task" program had full responsibility for hiring and managing their engineers, TVA had the natural ability as contracting authority to

suggest or recommend that certain engineers be hired to work on specific projects. The highly technical nature of the work combined with a very close working relationship between TVA's large engineering staff and contract engineers, regardless of the contracting method, would result naturally in TVA managers having a significant influence over which engineers were employed and which ones were not. This is not to say that TVA intervened in the supervision of non-TVA employees; only that TVA had some persuasion in placing engineers.

III. Andrew Bartlik

Complainant Andrew Bartlik holds a Bachelor of Science degree in Nuclear Engineering from the University of Lowell, and has done graduate work at the Rensselaer Polytechnic Institute. Prior to his employment at TVA, he worked in the Mechanical Engineering Section of Gibbs and Hill, an engineering firm that provides consultant services to nuclear utilities. Complainant's engineering expertise was in doing fire protection work at various U.S. nuclear facilities. His primary emphasis had been in ensuring that these nuclear utilities were properly implementing Nuclear Regulatory Commission "NRC" requirements that govern fire protection programs.

TVA hired Complainant in April, 1985 as a conbultant on TVA's fire protection program, because he had special expertise as a fire protection engineer and systems analyst. Mr. Bartlik's entire TVA-related employment was as a staff augmentee on a staff augmentation contract.

His first assignment was a project involving instrument sense lines at TVA's Bellefonte Plant, on which he worked some 14 months. He was then assigned to the Browns Ferry Plant for approximately three months until January, 1987, when he was transferred to the Sequoyah Plant.

At Browns Ferry, Complainant was assigned to a "baseline" program which was designed to re-establish design of the plant after it was recognized that the plant had design problems. He was given the task of researching all NRC documents and correspondence between the NRC and TVA in order to catalogue commitments made by TVA to the NRC in the area of fire protection. Bartlik worked on that assigriment for three months. Next TVA assigned Mr. Bartlik, in January, 1987, to work on a similar baseline program at its Sequoyah plants.

From January, 1987, until his staff augmentation contract on November 25, 1987, Bartlik worked on Appendix R and fire protection program problems, primarily for Sequoyah. In January, 1987, TVA was trying to restart its facilities, with the primary focus on the restart of Sequoyah, Unit 2. Mr. Bartlik's assignment at Sequoyah was to bring the plant into compliance with Appendix R prior to restart of the facility.

From the beginning of his TVA employment in April, 1985 to May, 1987, Bartlik worked for TVA through Gibbs and Hill. When that firm lost its contract, Bartlik's managers arranged for him to continue his fire protection work under a contract with American Technical Associates (ATA). He continued working at TVA through a staff augmentation contract with ATA until November 25, 1987.

IV. The Restart Problem

NRC requirements that govern the safe shutdown of nuclear power plants in the event of a fire are contained in Appendix R to 10 C.F.R. Part 50, commonly referred to in the industry as "Appendix R." Appendix R required that the NRC licensees conduct an analysis to ensure that its plants can be safely shut down and maintained in a safe shutdown condition in the event of a fire. The Appendix R program included all of TVA's nuclear plants, and compliance therewith was the responsibility of engineers and managers at both the central office in Knoxville and each plant.

Discrepancies noted in TVA's compliance with Appendix R and other operational requirements are documented by a "Condition Adverse to Quality Report (CAQR). Such reports are required to be made by the NRC so that safety problems can be promptly dealt with and corrected. CAQRs were generally initiated by first line engineers and supervisors and dealt with by higher level managers who had the responsibility to determine whether or not the

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discrepancy was sufficiently important to warrant attention or had been satisfactorily handled. CAQRs had to be resolved prior to operation of the unit if it was determined that the CAQR was a "restart item".

Any engineer with a serious safety concern was obligated to file a CAQR, and an employer who disagreed with the resolution of the CAQR had an obligation to escalate the matter further up the claim of command.

Compliance with Appendix R requires a number of engineering calculations which provide an analysis for the purpose of developing or proving the design of structures, systems or components. Many such calculations contain assumptions which must be verified at some point prior to operation. To properly document the design basis of the plant, these calculations had to be revised or regenerated in order to be verified or eliminated.

One example of a calculation containing unverified assumptions was an Appendix R calculation entitled "Equipment Required for Safe Shutdown per 10 C.F.R. 50, Appendix R." This calculation, which provided the basis for a considerable amount of dispute, had at least eight revisions. The failure to either verify or eliminate an assumption in a calculation or any of its revisions could form the basis for a CAQR.

Considering the magnitude of TVA's recovery program and the thousands of engineers involved in all phases of construction and renovation of the various plants, the management of resolving CAQRs alone was a tremendous effort. This effort was made even more difficult by the considerable pressure from the TVA Board, the consuming public, and the press to expedite the process of putting the units back into operation. When efforts stalled, new high-level managers were hired from industry sources to dislodge the jam.

A major problem TVA faced in its recovery program was trying to limit its engineering efforts to the technical and legal requirements of Appendix R, and to ensure that engineering calculations did not contain requirements that went beyond its scope. This desire to limit work to solving only problems that were necessary often came into conflict with the ideals of engineers who disagreed with the determinations, and felt they left unresolved problems that posed a potential risk to the

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public health and safety.

As one TVA manager commented, they did not need engineers who created more problems then they solved. On the other hand, the engineers, regardless of their zeal for health and safety or lack thereof, had a personal stake in their professional reputations. The management problem was trying to temper engineering concerns with economic reasoning.

V. The Protected Activities

Between the time Bartlik was transferred to the Sequoyah Plant in January, 1987, and his termination in November of that year, he identified a number of Appendix R problems, all of which he felt were serious enough to bring to the attention of his superiors. These deficiencies were all related to Bartlik's area of responsibility to ensure that the plant could be safely shut down and maintained that way in the event of a fire.

A. Lack of Documentation

After reviewing documentation for Sequoyah's Appendix R program, Bartlik determined that there were glaring deficiencies in TVA's Appendix R analysis that could not be explained from the available documentation. He reported this problem to his supervisor, who then assigned him the task of studying all available documentation. Bartlik identified a list of items that he felt should be reanalyzed because there was not sufficient documentation available to determine the level of TVA's compliance. He drafted a memorandum recommending the establishment of an Appendix R team to develop a complete documentation trail of the Appendix R analysis, and to ensure that all assumptions were backed up with appropriate calculations. The team would also ensure that all discrepancies between the functional criteria and actual shutdown methods were

justified and documented; that dynamic effects of fire induced transients were analyzed and documented; and that all of the operating procedures adequately addressed Appendix R events. Bartlik felt that the Appendix R team was a very important and essential effort.

Bartlik's supervisor directed him to recommend engineers for the team, including Bartlik. Both Bartlik and his supervisor felt that resolution of the items mentioned in the memorandum was a

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"restart item" that should be corrected before the plant could resume operation.

Plant management rejected the recommendation because they felt it was expanding the scope of the work and would delay the restart schedule. Several meetings were held at which there were emotional disagreements over Bartlik's recommendations. The project was stalled by upper management until after Bartlik's termination. An Appendix R team was finally established and designated a restart item after the NRC announced it would conduct an inspection of TVA's Appendix R program on December 8, 1987.

B. Instrument Sense Line CAQR

An instrument sense line is a small tube used in numerous instruments at a nuclear plant to transmit a pressure signal. Bartlik identified as a problem the fact that the instrument sense lines were not included in the Appendix R analysis. This problem was significant because a fire could potentially affect the instrument sense lines in a manner so that the instrument would read erratically or erroneously. The instrument sense lines needed to be included in the Appendix R analysis to make sure that they would function properly during a fire.

Bartlik first identified the instrument sense lines problem at Bellefonte. The Appendir R Project Coordinator agreed with Bartlik and issued a CAQR documenting the deficiency. Upper management recognized that the CAQR would require design changes that could potentially impact the restart of the plant and voided the CAQR.

Several additional CAQRs were written on the instrument sense lines problem at Bartlik's insistence, which finally caused the problem to be designated a restart item. Because of the time he spent on the issue and his familiarity with the problem, an effort was made to obtain a contract in order to extend Bartlik's employment so that he could work on the problem. The contract proposal was never approved and at the time Bartlik left the TVA the problem was not resolved.

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C. Steam Generator PORV Problem

In late January or early February, 1987, Bartlik studied the design of the steam generator power operated release valve (PORV) and concluded that it was not adequate to meet nuclear safety requirements. The PORV is a safety valve. Due to particular safety concerns, it is essential that the valve open when it is supposed to open and remain closed when it is supposed to be closed. Bartlik informed his supervisor that TVA's design of the PORV did not meet Appendix R requirements, and was directed to study the problem and develop corrective action. Bartlik proposed a design modification which, despite disagreement among some engineers, was submitted to the NRC.

After disputes with upper-level management, Bartlik continued to work on the problem, but no corrective action was taken. He finally filed a CAQR reporting the problem as a deficiency impacting on the safety of the plant. The CAQR was declared invalid and Bartlik escalated the issue by requesting a re-evaluation. Although meetings were held at which there was agreement with all but the upper level management, nothing more on the steam generator PORV problem was done by the time Bartlik left the TVA.

D. Letdown Problem

Letdown is the removal of water with one concentration of boric acid from the nuclear reactor vessel to make room for the addition of water with a higher concentration of boric acid. Letdown is necessary to increase the overall boric acid concentration in the reactor vessel in order to control reactivity. Letdown is also used to remove water from the vessel. In May, 1985 Bartlik had identified an error TVA had made in its initial letdown analysis at the Bellefonte Plant. Although this error was noted and corrected, there was difficulty in getting this requirement implemented at Sequoyah.

During his Appendix R analysis, Bartlik found that letdown was one of the items that was not properly documented. In bringing this problem to management's attention, he was met with hostility. Undaunted, Bartlik continued to work on the problem and recommended that letdown be added to the functional criteria. Although several meetings were held on the problem, and despite considerable agreement that the letdown requirement was a legitimate concern, nothing was done to resolve the problem by the time Bartlik left the TVA.

E. Spurious Actuations

Spurious actuation is aterm used to refer to the actuation of a device or the false signal sent to a valve to open or close that valve, or to start or stop a pump in an unintended manner. The problem of spurious actuation is a safety problem, and resulted in a fire at Browns Ferry in 1975.

Bartlik first identified this problem in February, 1987, while examining the design of the steam generator PORV. It became apparent that spurious operations were not addressed

in accordance with NRC requirements. Bartlik reported this problem to his supervisor who told him to examine it further. On inquiry, Bartlik was told that the NRC had approved TVA's design. When he requested the documentation to confirm this assertion the reaction was negative and many engineers were upset because of the fear that it could impact the restart schedule for the plant. Although Bartlik recommended that the spurious actuations be included in the functional criteria document describing the equipment requirements for safe shut down, there was no work done to resolve this problem or to include spurious actuation in the Appendix R analysis prior to the time Bartlik left TVA.

VI. The Reaction

Beginning in mid-1987, TVA began increased efforts to restart the Sequoyah Plant by that fall. The restart effort was described as "hectic and growing more hectic by the day." There was a good deal of pressure not to designate engineering discrepancies as restart items so that they could be deferred for resolution until after the plant resumed operation. Engineers were working a great deal of overtime, and potential safety problems that had to be resolved before restart created a lot of trouble.

Although TVA had set target dates beginning in October, 1987 for the restart of Sequoyah, they did not receive permission to restart until March of 1988. Complainant's presentation of the case emphasized an incident at a central office meeting with all engineers. At this meeting, Bartlik confronted one of the senior managers over a disputed resolution to a hypothetical engineering problem, and afterwards was told that this manager had been embarrassed at having to admit Bartlik's analysis was correct. The purpose of the meeting had been to persuade engineers to reduce the number of discrepancies being found, but ended without the point being made, at least through the example presented.

Although Complainant's case points to this incident as getting him in trouble with the top brass, I find that it was Bartlik's insistence in resolving the problems he brought to management's attention that caused his name to surface as a trouble maker. He had more than one unpleasant disagreement with second-level managers over differences in professional opinions, and the fact that he persisted in seeking what he believed to be the correct resolution of the problem at hand did not help secure his retention as a contract engineer.

Bartlik's contract expired on November 25, 1987, his last day at TVA. At one point, in early 1987, consideration was given to offering Bartlik a position as a permanent TVA staff engineer, but he did not consider the pay at that time to be adequate. When TVA's contract with Complainant's employer, Gibbs and Hill, expired in May of 1987, TVA arranged for him to be hired by American Technical Associates (ATA), a local "Job shopper"[2] firm. Bartlik's contract was then extended through November 25, 1987.

Although there was a change in the Sequoyah Project Engineer[3] between the spring and fall of 1987, both managers knew Bartlik and, either from first-hand information or supervisory reports, knew about many, if not all of the problems which Bartlik raised.

These managers, and perhaps others at TVA at the time, were often frustrated in their efforts to maintain the restart schedule while at the same time responding to reports of discoveries of new, and potentially serious, safety problems that had to be dealt with prior to restart.

After Bartlik's contract was extended to November 25, 1987 as a staff augmentee, efforts were made to extend his contract beyond that date under the TVA's new plan of managed task contracts. In fact, there were a number of contract proposals made by Bartlik's supervisors from September through November to keep him employed on a contract basis. These efforts were unsuccessful because management had determined not to approve any further contracts for Bartlik's services, even though Bartlik was highly qualified for the work. The majority of the projects for which Bartlik had been requested eventually were completed by other contracted engineers.

TVA chose not to retain Bartlik's services through contracting because of his persistence in following up problems which he believed needed to be corrected. In many industries this kind of activity might not amount to "whistle blowing" because the work Bartlik was doing routinely involved the constant review of engineering calculations in order to find and report mistakes. He was merely doing his job in trying to find defects that Dotentially could develop into a hazardous risk. However, the management atmosphere in which Bartlik was working contributed to his uneasiness over the apparent lack of concern by management in the problems he raised.

It was only because of Bartlik's extraordinary determination to ensure that these defects were corrected, and the possible disasterous results for the failure to do so that caused his otherwise unremarkable activities to rise to the level that deserved protection. This segment of the industry has such a high degree of potentially catastrophic exposure to warrant shielding employees from the kind of management reaction that might be forgiven in other work situations.

TVA's argument that Bartlik just happened to be caught between contracts during the change in contracting methods from staff augmentee to managed task, and therefore was out of work because of the natural expiration of his contract, is not a totally accurate picture of what actually occurred. While it was true that TVA did change its method of contracting, most of the thousands of engineers who were employed under the old system continued to work under the new contract method, although perhaps with a new firm or at different pay.

Bartlik's supervisors admittedly made several attempts to arrange for additional contracts and obviously wanted to keep his services. TVA was in the habit of arranging for the services of particular engineers through its contractors. Moreover, the work needed to be done. In fact, some of it was accomplished before the plant was restarted. These factors, when combined with management's failure to provide for Bartlik's continued employment, were ample evidence of retaliation.

VII. Damages

Bartlik's engineering employment experience was that of a contract engineer. At TVA, his contract salary was $145,000 per

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year.[4] The contracts proposed by his supervisors would have extended Bartlik's employment at least through February 5, 1988, approximately two and one-half additional months.

Approximately six months after Bartlik left TVA, he found employment at another nuclear power plant, on a contract basis, for a salary with overtime and living expenses at approximately $100,000 per year. Although he made considerably more money at TVA, the industry rate for straight time for journeyman engineers was closer to $25 per hour. Additional amounts paid for living expenses would not be compensable because, unless Bartlik was actually working at a remote location, he would not incur such expenses.

I find that the circumstances under which Bartlik left the TVA, combined with an unusual amount of publicity throughout the industry over his departure were primarily responsible for his failure to secure immediate employment. These conditions were a result of his "whistleblowing" activities. He had not previously had any trouble finding work, and most likely would not have had any if he had left TVA on a planned, orderly departure.

The staff augmentation contracts proposed for Bartlik would have expired on February 5, 1988. If they had been executed, he would have been employed for two and one-half months at $40 per hour for 40 hours, and $60 per hour overtime for 20 hours, for a total of $28,000. Bartlik was out of work an additional three and one- half months for which he should be compensated at the rate of $25 per hour for 40 hours. There is no evidence he would have worked overtime had he been employed, so the total amount would have been $14,000 for 14 weeks. In addition to lost wages, Bartlik incurred ,700 in actual expenses trying to find work.

Total damages: $43,700

There was not sufficient evidence that would support an award for the psychological damages he claims, or any loss in professional reputation. Although there was sufficient publicity surrounding Bartlik's problems at TVA to find that his name could have come

to the attention of prospective employers at the time, it would be pure speculation to find that any notoriety he gained at that time would endure forever.

Complainant asserts that he should be compensated from

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February 5, 1988 to January of 1991, when his present employment ends, at a differential in pay between his TVA contract salary and what he actually earned. Although I believe he would have had continuous employment to the present and beyond, the evidence indicated that the high contract salary Bartlik was enjoying was rapidly coming to an end. Any employment after February 5, 1988 would have been under the "managed task" method of contracting, which would have provided a salary level currently prevailing in the industry.

CONCLUSIONS OF LAW

The employee protection provision of the Energy Reorganization Act (ERA"), 42 U.S.C. § 5851(a) provides, in relevant part:

> (a) Discrimination against employee
> No employer, including a Commission licensee, an applicant for a Commission license, or a contractor or a subcontractor of a Commission licensee or applicant, may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)
> (1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or the Atomic Energy Act of 1954, as amended or a proceeding for the administration or enforcement of any requirement imposed under this chapter or the Atomic Energy Act of 1954, as amended;
> (2) testified or is about to testify in any such proceeding or;
> (3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this chapter or the Atomic Energy Act of 1954, as amended.

TVA is an owner and operator of nuclear power plants and is an employer under the ERA. Although Bartlik was an employee of a

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TVA contractor, he is covered by the Act. *Flanacan v. Bechtel Power Corp*., 81 ERA 7 (Dep't Labor 1986). The ERA must be construed and applied broadly to effectuate its remedial purposes. *Hill v. Tennessee Valley Authority*, 87 ERA 23 (Dep't Labor May 24, 1989), *slip op*. at 4; *Kansas Gas & Electric Co. v. Brock*, 780 F.2d 1505, 1512 (10th Cir. 1985); *Mackowiak v. University Nuclear Systems, Inc*., 735 F.2d 1159, 1163 (9th Cir. 1984). Bartlik made numerous reports of engineering deficiencies which involved safety to his superiors at TVA. His reports of engineering deficiencies involving safety, and his pursuit of the resolution of these problems are protected activity under the ERA. *Smith v. Norco Technical Services*, 85 ERA 17 (Dep't Labor 1987); *Kansas Gas & Electric Co., supra*; *Mackowiak v. University Nuclear Systems, Inc*., 735 F.2d 1159, 1163 (9th Cir. 1984).

Bartlik established that despite his best efforts, he was unable to persuade TVA management to continue his employment through either staff augmentee or managed task contracts. These efforts were concentrated during the six month period prior to his termination when he was also bringing numerous safety problems to management's attention. There was sufficient evidence to connect

Bartlik's problem raporting with TVA's failure to provide an extended contract. Bartlik's supervisors found his work to be competent. The fact that the engineering problems that Bartlik reported were corrected after his departure is proof that such problems existed and warranted resolution. Bartlik therefore made out a *prima facie* case of discrimination. *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981); *McDonnell Douglas Corp. v. Green*, 711 U.S. 792 (1973); *Hedden v. Conam Inspection*, 83 ERA 3 (Dep't Labor 1982). All of the elements in a typical discriminatory discharge case were proven. *Becton v. Detroit Terminal of Consolidated Freightways*, 687 F.2d 140, 141 (6th Cir. 1982).

TVA's defense that Bartlik happened to be a victim of a change in methods of contracting was effectively rebutted by its own evidence that it was able to arrange to continue employment for other contract engineers. Contracts were let by TVA for the services of engineers to perform the work which had been assigned to Bartlik.

Bartlik has not requested any type of reinstatement, nor do I believe it would be appropriate in this case. Moreover, his

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complaint of loss of future earning capacity was too speculative to be awardable. His most recent career had been that of a "job shopper" or contract engineer, and although he had enjoyed steady employment with TVA, there was no assurance that such contracts would extend far into the future.

RECOMMENDED ORDER

In view of the foregoing, it is hereby RECOMMENDED that the Secretary of Labor ORDER that:

1. TVA pay to Complainant, Andrew Bartlik, the sum of $42,000 in damages for loss of wages, and ,700 in expenses incurred in securing employment, for a total of $43,700 in damages.

2. TVA pay all reasonable expenses, including attorney's fees and costs, Complainant has incurred in pursuing his complaint to the Department of Labor. Thirty (30) days from this date are allowed for the submission of such expenses, including an itemization of attorney fees and costs. An additional fifteen (15) days are allowed thereafter for any comments thereon by TVA.

E. EARL THOMAS
District Chief Judge

[ENDNOTES]

[1] Throughout the hearing, TVA argued that its concerns in selecting the manner in which engineering services were to be provided were primarily economic, but scant evidence of that assertion was produced. On the other hand, there were numerous references during the hearing to supervisory and other personnel problems. No studies or reports were produced to show that TVA had, in fact saved specific amounts of money on identified projects by using one kind of personal service contracting over another, or by doing the same job in-house. TVA's additional argument that contracting project segments was less expensive per hour then personal service contracts because of "increased productivity" was likewise undocumented.

[2] "Job shopper" firms typically house engineers in various disciplines, whose services are contracted to companies on an as needed basis.

[3] The Sequoyah Project Engineer reports to the plant manager, and has responsibility for ensuring that Appendix R problems are resolved.

[4] This figure apparently included some compensation for expenses, because Complainant worked on the basis of $40 per hour for 40 hours, and $60 per hour for overtime up to 20 hours per week.